19

Office - Supreme Court, U. S.
FILED
JAN 13 1954
HAROLD B. WILLEY, Clerk

IN THE

Supreme Court of the United States

OCTOBER TERM, 1953

No. 496

NOAH DIETRICH, *Petitioner*

v.

CAROL DIETRICH, *Respondent*

PETITIONER'S REPLY BRIEF

CLARK M. CLIFFORD
WILLIAM H. DORSEY, JR.
Washington, D. C.

LOYD WRIGHT
CHARLES A. LORING
Los Angeles, California
Attorneys for Petitioner

CLIFFORD AND MILLER
1523 L Street, N. W.
Washington 5, D. C.

WRIGHT, WRIGHT, GREEN AND WRIGHT,
111 West Seventh Street
Los Angeles 14, California
Of Counsel.

PRESS OF BYRON S. ADAMS, WASHINGTON, D. C.

INDEX

		Page
Introduction		1
Point I.	Of the Non-Federal Grounds Alleged by Respondent as the Bases of the Decision of the California Supreme Court, One Was Deliberately By-Passed by that Court and the Other Was Specifically Held by it Not To Be Controlling	2
Point II.	As Applied to the Factual Situation Admittedly Involved in This Case the Non-Federal Doctrine of Estoppel Is Plainly Untenable	3
Conclusion		5

CITATIONS

CASES:

Abie State Bank v. Bryan, 282 U.S. 765	3
Lawrence v. State Tax Commission, 286 U.S. 276	3
Union Bank & Trust Company v. Gordon, 116 Cal. App. (2d) 681, 254 P. (2d) 644	4
Union Pacific Railroad v. Public Service Commission of Missouri, 248 U.S. 67	3
Ward v. Love County, 253 U.S. 17	3

IN THE

Supreme Court of the United States

OCTOBER TERM, 1953

No. 496

NOAH DIETRICH, *Petitioner*

v.

CAROL DIETRICH, *Respondent*

PETITIONER'S REPLY BRIEF

INTRODUCTION

In his application for a Writ of Certiorari petitioner alleged that this case involved important questions concerning the proper application of the Full Faith and Credit, the Due Process and the Equal Protection Clauses of the Constitution of the United States.

In her Answer respondent has asserted that the decision of the California Supreme Court was based solely upon state grounds and that, accordingly, no federal questions are involved herein. This assertion raises a basic jurisdictional problem. Petitioner did not deal with the question in his Petition for Certiorari because there has never been any doubt in his mind that important federal questions

are involved herein. However, he will now briefly discuss this problem.

I.

Of The Non-Federal Grounds Alleged By Respondent As The Bases Of The Decision Of The California Supreme Court, One Was Deliberately By-Passed By That Court And The Other Was Specifically Held By It Not To Be Controlling

The trial court and the District Court of Appeal both ruled that since petitioner was not a party to the prior Nevada divorce decree he had no standing to collaterally attack it by questioning the validity of his purported subsequent marriage to respondent. Having declared petitioner estopped to question the Nevada decree, the California Supreme Court held it "unnecessary" to pass upon the correctness of any other ruling of the lower court. The highest California Court, therefore, deliberately by-passed one state ground now claimed by respondent as adequately supporting the state court's decision.

Respondent contends that the California Supreme Court simply ruled in this case that *because of the factual situation here involved* the petitioner could not question at a *pendente lite* hearing the validity of his marriage to respondent. Respondent argues that this is nothing more than a ruling by a state court on a matter of state procedure involving no federal question whatsoever. Unfortunately, the California Supreme Court did much more than tie this petitioner's hands at a *pendente lite* hearing when (after discussing the procedural question) it specifically ruled as follows:

> "There is, however, another and more fundamental ground [i.e., estoppel] which not only is controlling at this stage of the proceedings but presumptively will be controlling on the trial as well." (R. 124)

It is manifest, therefore, that the California Supreme Court itself did not rest its decision on the narrow, non-

federal, procedural ground now urged by the respondent, but that it deliberately chose to attempt to apply a doctrine of estoppel to petitioner in perpetuity.

II.

As Applied To The Factual Situation Admittedly Involved In This Case The Non-Federal Doctrine Of Estoppel Is Plainly Untenable

The California Supreme Court specifically held that since, at the time of his purported marriage to the respondent he had knowledge of the factual circumstances under which she had procured her Nevada divorce, petitioner was estopped from even questioning the validity of his marriage to the respondent (R. 124). This determination which implies that petitioner knew of the invalidity of respondent's prior Nevada divorce is in direct conflict with petitioner's rejected offer of proof which under California law must now be accepted as true.

Respondent's basic contention is that in holding petitioner estopped the California court was only determining local state policy and was not deciding a federal question. Petitioner agrees that estoppel may or may not be an adequate non-federal ground to support a decision of a state court. However, the jurisdiction of the United States Supreme Court to review a final judgment of the highest court of a state (which court affirmed a lower court's judgment that erroneously determined a federal question) cannot be defeated by the fact that the highest state court based its final judgment on a non-federal ground which is plainly untenable. *Lawrence* v. *State Tax Commission*, 286 U.S. 276; *Union Pacific Railroad* v. *Public Service Commission of Missouri*, 248 U.S. 67; *Ward* v. *Love County*, 253 U.S. 17; and *Abie State Bank* v. *Bryan*, 282 U.S. 765.

As Mr. Justice Carter of the California Supreme Court in his separate concurring and dissenting opinion (R. 126-128) has pointed out, the application of the doctrine of estoppel to the petitioner in this case is clearly untenable because the factual situation admittedly involved does not

contain two elements which are ordinarily and universally considered indispensable elements of estoppel, namely: (1) ignorance, innocence and good faith on the part of the person invoking the estoppel, and (2) knowledge and bad faith on the part of the person estopped.

From the rejected offer of proof (R. 40-52) it conclusively appears that the respondent was not ignorant nor innocent nor a good-faith actor when she deliberately perpetrated a fraud on the Nevada court. It also definitely appears from the offer of proof that petitioner had no knowledge of the invalidity of the respondent's prior divorce until about a month prior to the hearing of this case in the trial court (R. 30), that he in no way participated in the fraud on the Nevada court (R. 42; 50-51; 127) and that, in fact, he had unsuccessfully attempted to persuade respondent to procure her divorce in Texas where she intended to make her permanent home (R. 42).

In spite of these judicially unassailable facts the California Supreme Court applied the doctrine of estoppel to petitioner. The application of the doctrine of estoppel to petitioner appears to be all the more arbitrary and discriminatory in view of the fact that barely four months before its decision in this case the California Supreme Court had denied a hearing in the case of *Union Bank & Trust Company v. Gordon*, 116 Cal. App. (2d) 681, 254 P. (2d) 134 in which the District Court of Appeal had refused to apply the doctrine of estoppel against a second spouse who knew her husband had obtained a prior Nevada divorce but who the petitioner did *not* know that the prior divorce might be invalid, and in which the District Court of Appeal said:

> "When we note the great difficulty courts and lawyers have had in determining when an out of state divorce decree is or is not valid, it would be incongruous indeed to charge a lay woman [Noah] with absolute knowledge merely because she [Noah] knew that a divorce decree had been rendered by a state other than that of the residence of the parties."

With two indispensable elements of estoppel missing from the factual situation involved in his case, petitioner naturally maintains that the doctrine of estoppel is plainly untenable as applied to him, particularly in view of the California Supreme Court's approval of the decision of the District Court of Appeal in the *Union Bank & Trust Company* case, *supra*.

CONCLUSION

In addition to the above detailed defects, respondent's Answer completely ignores petitioner's argument that the very attempt to place the state court judgment on a non-federal ground *per se* constituted a denial of additional constitutional rights in petitioner.

Accordingly, petitioner reasserts that there are basic and important federal questions involved in this case and he again prays that his Petition for a Writ of Certiorari be granted.

Respectfully submitted,

CLARK M. CLIFFORD
WILLIAM H. DORSEY, JR.
Washington, D. C.

LOYD WRIGHT
CHARLES A. LORING
Los Angeles, California
Attorneys for Petitioner

CLIFFORD AND MILLER
1523 L Street, N. W.
Washington 5, D. C.

WRIGHT, WRIGHT, GREEN AND WRIGHT,
111 West Seventh Street
Los Angeles 14, California
Of Counsel.